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Second Degree Murder Of Peace Officer. Minimum Term.

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Second Degree Murder of Peace Officer. Minimum Term. Legislative Initiative Amendment

Official Title and Summary Prepared by the Attorney General

SECOND DEGREE MURDER OF PEACE OFFICER. MINIMUM TERM. LEGISLATIVE INITIATIVE AMENDMENT. Existing law enacted by initiative provides second degree murder penalty is 15 years to life in prison. Minimum term is reduced by good behavior credits, but not by parole. This measure increases the minimum prison term for second degree murder to 25 years in cases where the murderer knew or should have known the victim was a specified peace officer engaged in the performance of his or her duties. Person guilty of second degree murder under such circumstances must serve a minimum of 25 years without reduction. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: Measure will have a relatively minor impact on state costs and the state's prison population.

Final Vote Cast by the Legislature on SB 402 (Proposition 67)

Assembly: Ayes 66
Noes 1

Senate: Ayes 24
Noes 0

Analysis by the Legislative Analyst

Background

Under California law, the crime of murder is divided into two categories: first degree and second degree. Generally, "first degree murder" is planned, or takes place during the commission of certain other crimes, or involves torture or the use of poison or certain destructive devices. Murder not involving these elements is "second degree." The punishment for first degree murder is one of the following: 25 years to life in state prison, life in state prison without the possibility of parole, or death. The punishment for second degree murder is 15 years to life in state prison.

Current law allows state prison inmates to earn credits to reduce their time in prison. According to the State Attorney General, persons sentenced for 25 years to life in state prison for first degree murder and persons sentenced for second degree murder can reduce their prison time by up to one-third by earning credits for (1) good behavior and (2) participation in prison education or training programs. The earned credits, however, do not automatically establish the time of release. That date

is decided by the Board of Prison Terms.

Proposal

This measure increases the punishment for persons convicted of second degree murder when the victim was a peace officer performing his or her duties and the murderer knew or should have known this. The new sentence would be 25 years to life in prison. The "peace officer" includes various types of law enforcement officers, such as deputy sheriffs, city police officers, members of the California Highway Patrol or State Police, and correctional officers. The measure also requires these convicted persons to spend at least 25 years in prison. They may not earn credits to reduce their prison time.

Fiscal Effect

This measure will result in additional state costs due to longer prison terms. Based on historical trends, a small number (probably fewer than 10 persons per year) will be convicted of second degree murder of a peace officer. As a result, this measure will have a relatively minor impact on state costs and the state's prison population.

Text of Proposed Law

This law proposed by Senate Bill 402 (Statutes of 1987, Chapter 1006) is submitted to the people in accordance with the provisions of Article II, Section 10 of the Constitution.

This proposed law amends a section of the Penal Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Section 190 of the Penal Code is amended to read:

190. (a) Every person guilty of murder in the first degree shall suffer death, confinement in state prison for life without possibility of parole, or confinement in the state prison for a term of 25 years to life. The penalty to be applied shall be determined as provided in Sections 190.1, 190.2, 190.3, 190.4, and 190.5.

~~Every~~ *Except as provided in subdivision (b), every* person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 15 years to life.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall apply to reduce any minimum term of 25 or 15 years in a state prison imposed pursuant to this section, but such person shall not otherwise be released on parole prior to such time.

(b) Every person guilty of murder in the second degree shall suffer confinement in the state prison for a term of 25 years to life if the victim was a peace officer, as defined in subdivision (a) of Section 830.1, subdivision (a) or (b) of Section 830.2, or Section 830.5, who was killed while engaged in the performance of his or her duties, and the defendant knew or reasonably should have known that the victim was such a peace officer engaged in the performance of his or her duties.

The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code shall not apply to reduce any minimum term of 25 years in state prison when the person is guilty of murder in the second degree and the victim was a peace officer, as defined in this subdivision, and such person shall not be released prior to serving 25 years confinement.

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Argument in Favor of Proposition 67

Your vote for Proposition 67 will substantially increase the minimum penalty for second degree murder of a peace officer in the line of duty. The Legislature and the Governor strongly support this change and have already acted to raise the minimum penalty by passing SB 402, Chapter 1006 of 1987, by Senator Robert Presley. The new law cannot take effect, however, without the approval of the voters.

The murder of peace officers is a serious and growing problem in California. Fifty front-line officers were killed in violent assaults between 1980 and 1986. Such killings are an assault upon the very fabric of a free and lawful society. Yet, under current law, a killer convicted of the second degree murder of a peace officer could serve as few as 10 years in prison after time off for good behavior.

By voting for Proposition 67 you will approve the

Legislature's decision to raise the minimum penalty to 25 years in prison. That is 25 years *minimum*. There will be no time off for good behavior. When a criminal kills a cop, there will be no leniency.

Law enforcement officers are the public's last line of defense. We ask these men and women to take enormous risks on our behalf. We owe it to them to punish their killers to the fullest extent of the law.

Join us in support of our peace officers by voting for Proposition 67.

ROBERT PRESLEY

State Senator, 36th District

SHERMAN BLOCK

Sheriff, Los Angeles County

JOHN K. VAN DE KAMP

Attorney General of California

Rebuttal to Argument in Favor of Proposition 67

The proponents of Proposition 67 would like you to believe that the issue at hand is whether or not you support our peace officers in the lawful and sometimes hazardous discharge of their duties. If that were the question you'd find no argument here. Unfortunately, the question isn't that clear and simple.

Proposition 67 asks us to sentence a criminal convicted of an unplanned act of violence to a longer term than that given to a criminal who committed a meticulously planned, premeditated murder. Obviously, neither action should or can be condoned; however, it is only sensible to mete out the harsher punishment to the individual that planned, schemed, and intended to commit the murder. Proposition 67 doesn't do that. It would make the penalty for second degree murder tougher than the penalty for first degree murder.

Proposition 67 isn't well thought out. *All* California peace officers risk their lives for our protection. But this proposition treats some officers differently than others. Some peace officers are covered, some are not.

We agree that tough sentences for those who murder peace officers are called for. Unfortunately, Proposition 67 doesn't establish a predictable, consistent penalty. It doesn't protect all peace officers. Proposition 67 just doesn't make sense.

ROBERT J. CAMPBELL

Member of the Assembly, 11th District

THOMAS J. NOLAN, JR.

President, Attorneys for Criminal Justice

RICHARD HIRSCH

Past President, Attorneys for Criminal Justice

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Argument Against Proposition 67

Most laws that are introduced to be tough on crime are submitted with the best of intentions. They usually are pursued because some criminal didn't get what he or she deserved in punishment. Unfortunately, this crime proposal is inconsistent, nonsensical and ill-conceived.

How is it inconsistent? The provisions would apply to the murder of some peace officers, but not others. Kill a probation officer and the provisions apply. Kill an arson investigator, and they do not. The provisions would not apply if the victim was a university police officer, an officer with the transit police, school district, or numerous other agencies. Punishment should be swift *and* predictable. Pass this measure and it would not be.

Why is this measure nonsensical? It could make the penalty for second degree murder tougher than the penalty for first degree murder. Existing law provides 25 years to life for first degree murder, but allows for work or good behavior credits that could reduce the first degree sentence to 16 years. This measure specifies that 25 years is the minimum time that can be served for second degree murder of a peace officer. Do we really

want to provide any incentives for murderers to premeditate and commit their crimes in the first degree?

This measure is ill-conceived. It does not increase the possible penalty for murder; that already is life in prison. All this measure does is remove the incentive for good behavior and prohibit persons convicted of second degree murder from participating in a work credit program. Work credit programs were created to make managing prisoners easier, to give the prisoners some incentive to work and learn some skills while in prison, rather than allowing them to indulge in years of idleness.

California's peace officers lay their lives on the line for us every day. They deserve, and have long received, my support. Unfortunately, Proposition 67 would be bad law. It is ill-conceived, inconsistent, and extremely nonsensical.

ROBERT J. CAMPBELL

Member of the Assembly, 11th District

THOMAS J. NOLAN, JR.

President, Attorneys for Criminal Justice

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Past President, Attorneys for Criminal Justice

Rebuttal to Argument Against Proposition 67

The opposition's claims about Proposition 67 are wrong.

Proposition 67 is for the protection of "front line" peace officers—deputy sheriffs, city police, marshals, Highway Patrol officers and correctional officers. These are the officers most subject to dangerous and life-threatening situations.

Proposition 67 makes the minimum penalty for second degree murder of a peace officer tougher: another 15 years before parole eligibility.

Why this change? When a murder is spontaneous or when the criminal is not armed and uses the officer's weapon, it is nearly impossible to prove the act was premeditated and thus first degree murder. Because of this, district attorneys must often charge for the lesser crime of second degree murder in order to ensure a conviction. The result is this: A cop is dead and the killer

can be free after as few as 10 years.

Don't believe for a moment the opposition's argument that Proposition 67 might encourage a criminal to premeditate the murder of a peace officer. When it's premeditated, it's murder in the first degree with special circumstances and for that the penalty is death or life without the possibility of parole.

We ask peace officers to risk their lives to protect us. They deserve this important change in the law.

Vote *Yes* on Proposition 67. Let's make certain the punishment fits the crime.

ROBERT PRESLEY

State Senator, 36th District

SHERMAN BLOCK

Sheriff, Los Angeles County

JOHN K. VAN DE KAMP

Attorney General of California